

None

**Utah Code Sections Affected:**

**AMENDS:**

**76-3-203.6**, as last amended by Laws of Utah 2007, Chapter 339

**76-3-206**, as last amended by Laws of Utah 2009, Chapter 76

**76-3-207**, as last amended by Laws of Utah 2010, Chapter 373

**76-3-207.5**, as last amended by Laws of Utah 2001, Chapter 209

**76-3-207.7**, as last amended by Laws of Utah 2009, Chapter 76

**ENACTS:**

**76-3-209**, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **76-3-203.6** is amended to read:

**76-3-203.6. Enhanced penalty for certain offenses committed by prisoner.**

(1) As used in this section, "serving a sentence" means a prisoner is sentenced and committed to the custody of the Department of Corrections, the sentence has not been terminated or voided, and the prisoner:

(a) has not been paroled; or

(b) is in custody after arrest for a parole violation.

(2) If the trier of fact finds beyond a reasonable doubt that a prisoner serving a sentence for a capital felony or a first degree felony commits any offense listed in Subsection ~~(3)~~ (5), the court shall sentence the defendant to life in prison without parole. ~~[However,]~~

(3) Notwithstanding Subsection (2), the court may sentence the defendant to an indeterminate prison term of not less than 20 years and ~~[which] that~~ may be for life if the court finds that the interests of justice would best be served and states the specific circumstances justifying the disposition on the record.

(4) Subsection (2) does not apply if the prisoner is younger than 18 years of age at the time the offense listed in Subsection (5) is committed ~~H→~~ **and is sentenced on or after**

**May 10, 2016 ←H** .

~~(3)~~ (5) Offenses referred to in Subsection (2) are:

(a) aggravated assault, ~~[Subsection]~~ Section 76-5-103~~(2)~~;

(b) mayhem, Section 76-5-105;

88 (i) death;

89 (ii) an indeterminate prison term of not less than 25 years and that may be for life; or

90 (iii) on or after April 27, 1992, life in prison without parole.

91 (b) Subsections (2)(a)(i) and (2)(a)(iii) do not apply if the person was younger than 18  
92 years of age at the time the offense was committed ~~H~~→ **and was sentenced on or after**  
92a **May 10, 2016** ←~~H~~ .

93 ~~[(2)]~~ (3) (a) The judgment of conviction and sentence of death is subject to automatic  
94 review by the Utah State Supreme Court within 60 days after certification by the sentencing  
95 court of the entire record unless time is extended an additional period not to exceed 30 days by  
96 the Utah State Supreme Court for good cause shown.

97 (b) The review by the Utah State Supreme Court has priority over all other cases and  
98 shall be heard in accordance with rules promulgated by the Utah State Supreme Court.

99 Section 3. Section **76-3-207** is amended to read:

100 **76-3-207. Capital felony -- Sentencing proceeding.**

101 (1) (a) When a defendant has pled guilty to or been found guilty of a capital felony,  
102 there shall be further proceedings before the court or jury on the issue of sentence.

103 (b) In the case of a plea of guilty to a capital felony, the sentencing proceedings shall  
104 be conducted before a jury or, upon request of the defendant and with the approval of the court  
105 and the consent of the prosecution, by the court which accepted the plea.

106 (c) (i) When a defendant has been found guilty of a capital felony, the proceedings  
107 shall be conducted before the court or jury which found the defendant guilty, provided the  
108 defendant may waive hearing before the jury with the approval of the court and the consent of  
109 the prosecution, in which event the hearing shall be before the court.

110 (ii) If circumstances make it impossible or impractical to reconvene the same jury for  
111 the sentencing proceedings, the court may dismiss that jury and convene a new jury for the  
112 proceedings.

113 (d) If a retrial of the sentencing proceedings is necessary as a consequence of a remand  
114 from an appellate court, the sentencing authority shall be determined as provided in Subsection  
115 (6).

116 (2) (a) In capital sentencing proceedings, evidence may be presented on:

117 (i) the nature and circumstances of the crime;

118 (ii) the defendant's character, background, history, and mental and physical condition;

(c), as applicable;

(b) judge, the original trial judge shall conduct the new sentencing proceeding; or

(c) judge, and the original trial judge is unable or unavailable to conduct a new sentencing proceeding, then another judge shall be designated to conduct the new sentencing proceeding, and the new proceeding will be before a jury unless the defendant waives the hearing before the jury with the approval of the court and the consent of the prosecution.

(7) If the penalty of death is held to be unconstitutional by the Utah Supreme Court or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death for a capital felony shall cause the person to be brought before the court, and the court shall sentence the person to life in prison without parole.

(8) (a) If the appellate court's final decision regarding any appeal of a sentence of death precludes the imposition of the death penalty due to mental retardation or subaverage general intellectual functioning under Section 77-15a-101, the court having jurisdiction over a defendant previously sentenced to death for a capital felony shall cause the defendant to be brought before the sentencing court, and the court shall sentence the defendant to life in prison without parole.

(b) If the appellate court precludes the imposition of the death penalty under Subsection (8)(a), but the appellate court finds that sentencing the defendant to life in prison without parole is likely to result in a manifest injustice, it may remand the case to the sentencing court for further sentencing proceedings to determine if the defendant should serve a sentence of life in prison without parole or an indeterminate prison term of not less than 25 years and which may be for life.

Section 4. Section **76-3-207.5** is amended to read:

**76-3-207.5. Applicability -- Effect on sentencing -- Options of offenders.**

(1) (a) The sentencing option of life without parole provided in Sections 76-3-201 and 76-3-207 applies only to those capital felonies for which the offender ~~is~~ **→ [was 18 years of age or older at the time the offense was committed and]** ~~← is~~ is sentenced on or after April 27, 1992.

(b) The sentencing option of life without parole provided in Sections 76-3-201 and 76-3-207 has no effect on sentences imposed in capital cases prior to April 27, 1992.

(2) An offender, who commits a capital felony prior to April 27, 1992, but is sentenced on or after April 27, 1992, shall be given the option, prior to a sentencing hearing pursuant to

Section 76-3-207, to proceed either under the law which was in effect at the time the offense was committed or under the additional sentencing option of life in prison without parole provided in Sections 76-3-201 and 76-3-207.

**Ĥ→ (3) The sentencing option of life without parole has no effect on sentences imposed on an offender who was younger than 18 years of age at the time the offense was committed and was sentenced on or after May 10, 2016. ←Ĥ**

Section 5. Section **76-3-207.7** is amended to read:

**76-3-207.7. First degree felony aggravated murder -- Noncapital felony -- Penalties -- Sentenced by court.**

(1) A person who has pled guilty to or been convicted of first degree felony aggravated murder under Section 76-5-202 shall be sentenced by the court.

(2) (a) The sentence under this section shall be:

(i) life in prison without parole; or

(ii) an indeterminate prison term of not less than 25 years and ~~[which]~~ that may be for life.

(b) Subsection (2)(a)(i) does not apply if the person was younger than 18 years of age at the time the offense was committed **Ĥ→ and was sentenced on or after May 10, 2016 ←Ĥ** .

Section 6. Section **76-3-209** is enacted to read:

**76-3-209. Limitation on sentencing for juveniles.**

Notwithstanding any provision of law, a person may not be sentenced to life without parole if convicted of a crime punishable by life without parole if, at the time of the commission of the crime, the person was younger than 18 years of age. The maximum punishment that may be imposed on a person described in this section is **Ĥ→ [life-with-the possibility of parole] an indeterminate prison term of not less than 25 years and that may be for life ←Ĥ** . This section shall **Ĥ→ only ←Ĥ** apply prospectively to individuals sentenced on or after  
May 10, 2016.